

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Streamlining the Commission's Antenna ) WT Docket No. 95-5  
Structure Clearance Procedure )  
 )  
and )  
 )  
Revision of Part 17 of the Commission's )  
Rules Concerning Construction, Marking, ) DOCKET FILE COPY ORIGINAL  
and Lighting of Antenna Structures )

COMMENTS OF  
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association  
("CTIA")<sup>1</sup> hereby submits its comments on the Notice of  
Proposed Rule Making in the above-captioned proceeding.<sup>2</sup>

INTRODUCTION

In the Notice, the Commission proposes to streamline its  
antenna structure clearance process and to revise its Rules  
governing the construction, marking and lighting of antenna

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<sup>1</sup> CTIA is the international organization of the  
wireless communications industry for both wireless carriers  
and manufacturers. Membership in the association covers all  
Commercial Mobile Radio Service providers, including  
cellular, personal communications services, enhanced  
specialized mobile radio, and mobile satellite services.

<sup>2</sup> In the Matter of Streamlining the Commission's  
Antenna Structure Clearance Procedure and Revision of Part  
17 of the Commission's Rules Concerning Construction,  
Marking, and Lighting of Antenna Structures, WT Docket No.  
95-5, FCC 95-16, (released January 20, 1995) ("Notice").

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structures to incorporate the FAA's Advisory Circulars.<sup>3</sup> Specifically, the Commission proposes to implement a uniform registration process for antenna structures whereby the owner of the antenna structure, rather than each licensee or permittee on the antenna structure, is primarily responsible for the structure's operation and maintenance.<sup>4</sup>

While the proposed rules require registration of a new antenna structure prior to its construction, the Commission acknowledges that cellular and PCS applicants generally are not required to specify the location of all system antenna structures prior to a system authorization.<sup>5</sup> The Commission proposes that cellular, PCS, and any other service provider that are not required to specify each antenna site prior to licensing "would not be required to provide a Registration Number prior to the grant of a system authorization, and...each subject antenna structure would have to be registered prior to construction."<sup>6</sup>

In the *Notice*, the Commission states that its proposals concerning antenna structure registration, particularly the revisions of FCC Form 854, does not "relieve the owner of

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<sup>3</sup> *Notice*, ¶ 4.

<sup>4</sup> *Notice*, ¶¶ 7, 21.

<sup>5</sup> *Notice*, ¶ 13.

<sup>6</sup> *Id.*

responsibility for compliance with applicable local or State laws."<sup>7</sup>

### **DISCUSSION**

CTIA supports the Commission's proposals to streamline and expedite the application process through the adoption of uniform antenna registration procedures. If adopted, these proposals will reduce the administrative burden on wireless licensees as well as the Commission staff, thereby improving the ease and efficiency of compliance with Part 17 of the Commission rules governing the construction, marking and lighting of antenna structure.

The cornerstone to the Commission's proposed revisions to Part 17 is the proposal to make the owner of the antenna structure primarily responsible for structure operation and maintenance. CTIA believes that such action is appropriate, and generally supports the proposal since it appropriately places the burden upon the entity that has control over the structure, i.e., the owner.

As the Commission knows, in many cases, a licensee or permittee may lease space on a structure but have very little control, if any, over the maintenance of the structure. This is especially true if the structure has a primary use that is different from its use as an antenna structure, for example, in instances where wireless carriers use municipal water

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<sup>7</sup> Notice, ¶ 4.

towers and other pre-existing structures to support their antennas.

There are instances, however, where licensees have entered into agreements whereby a single entity, who may not be the owner, contractually has agreed to be responsible for monitoring and maintaining a structure in compliance with Commission and FAA requirements.<sup>8</sup> In such instances, where contractual agreements have evolved in the private sector to best serve the needs of all of the affected parties, the Commission's rules should be flexible enough to permit the owner and licensees/permittees by contract to shift responsibility for compliance from the structure's owner to a willing (and contractually bound) non-owner who would be responsible for filing the necessary notifications and maintaining the structure in compliance with Commission and FAA rules.

CTIA also supports the Commission's proposal to allow cellular, PCS and any other service providers that are not required to specify antenna sites prior to licensing to defer registration until after the grant of its system authorization and prior to construction. The registration of specific antenna structures prior to licensing would only create additional burdens on wireless service providers, particularly

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<sup>8</sup> See Notice, ¶ 7 at n.16.

when local and state zoning boards arbitrarily require a wireless service provider to relocate or seek alternative tower sites.

The *Notice* also seeks comment on any related matter pertaining to the registration of antenna structures.<sup>9</sup> In that regard, the Commission has acknowledged that licensees on a single antenna structure "may have submitted different site coordinates or structure parameters."<sup>10</sup> Similarly, even where all licensees on a tower (or a sole licensee) have submitted the same site data, that information -- while consistent -- still may not be correct.

While the data no doubt was submitted in good faith, and in the belief that it was accurate, there can be numerous ways erroneous data could have been recorded. For example, the site coordinates may have been calculated with a methodology that produced less accurate data than might be available with alternative approaches, especially given recent advances in measuring coordinates, or by using a methodology that may be less accurate in certain areas of the country. Alternatively, a licensee may rely on the coordinates reflected in the FCC database (but which are erroneous) supplied by the tower owner or an existing licensee on the facility.

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<sup>9</sup> *Notice*, ¶ 4.

<sup>10</sup> *Notice*, ¶ 6.

While CTIA does not know the number of towers where site data reported to the Commission is not correct, we understand that it has the potential to be significant. The Commission should seek to obtain as accurate a database as possible, and thus should encourage owners of existing reportable towers to provide corrected data to the extent possible as part of the transition to tower registration.

The Commission must recognize, however, that in the absence of a "safe harbor," concerns about forfeitures and the regulatory implications of different (but corrected) site coordinates, may lead tower owners and their tenant licensees to continue to supply erroneous data. For example, depending upon the difference in actual and previously reported locations, corrected site coordinates could lead to a revision in a cellular licensee's protected cellular geographic services area ("CGSA"). Other services are also likely to be affected.

Therefore, in order to provide tower owners with the incentive to provide corrected site data, the Commission should adopt a "safe harbor" provision in connection with the transition to a tower registration program. Licensees should be protected against forfeitures for tower "relocations" that occur as the result of obtaining and submitting corrected site location information. In addition, the Commission must adopt mechanisms to ensure

that the regulatory rights and obligations of licensees are not altered simply because tower site coordinates are reported on a more accurate basis.<sup>11</sup> A "safe harbor" provision included in the Commission's tower transition plans will help to achieve the goal of fully implementing the tower registration program for existing facilities as well as obtaining the most correct data available for the Commission's and the public's use.

Finally, the Commission states that antenna structure registration does not relieve the antenna owner from compliance with local and state laws. Since local and state zoning authorities have used their powers to restrict or prohibit the construction of wireless transmission sites, CTIA strongly urges the Commission to clarify that the Commission has the authority to preempt local and state laws governing antenna structures clearance when such laws arbitrarily prohibit or substantially delay the entry or provision of wireless services to consumers.<sup>12</sup>

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<sup>11</sup> For example, the Commission could adopt policies by which cellular licensees would be permitted to make adjustments to their service areas in order to retain all previously protected CGSAs, even if the market is past its five year date.

<sup>12</sup> CTIA has asked the Commission to preempt state and local regulation of tower siting for Commercial Mobile Services Providers in its Rulemaking Petition, RM - 8577 (Dec. 22, 1994).

**CONCLUSION**

For the foregoing reasons, CTIA supports the Commission's proposal to amend its rules to provide for the uniform and streamlined registration of antenna structures. CTIA also urges the Commission to preempt local and state laws that thwart or delay the construction of wireless transmission sites which are necessary for the swift deployment of wireless voice, data, and public safety services to the public.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael F. Altschul", written over a horizontal line.

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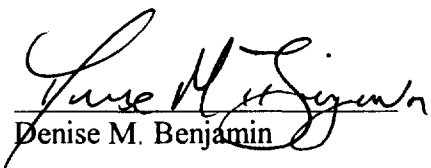


## CERTIFICATE OF SERVICE

I, Denise Benjamin, hereby certify that on this 21th day of March, 1995 the foregoing Comments on the Notice of Proposed Rulemaking of the Cellular Telecommunications Industry Association were served by hand delivery upon the following parties:

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